

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTONIO RIVERA and SHARON LOPEZ,

Plaintiffs,

-against-

CITY OF NEW YORK, et al.,

Defendants.  
-----X

**ANSWER**

Docket No. 07-CV-8061 (DLC)(KNF)

**JURY TRIAL DEMANDED**

Defendant City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the Complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the Complaint, except admits that plaintiff purports to bring the action and proceed as stated therein.
2. Denies the allegations set forth in paragraph "2" of the Complaint, except admits that plaintiff purports to bring the action as stated therein.
3. Denies the allegations set forth in paragraph "3" of the Complaint, except admits that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the Complaint, except admits that plaintiff purports to base venue as stated therein.
5. The allegations set forth in paragraph "5" of the Complaint do not constitute a factual averment to which a response is required.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Denies the allegations set forth in paragraph “7” of the Complaint, except admits that Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York.

8. Denies the allegations set forth in paragraph “8” of the Complaint, except admits that the City of New York maintains a police department.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9 ” of the Complaint.

10. Paragraph “10” of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no response is required.

11. Paragraph “11” of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no responses is required.

12. Paragraph “12” of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no response is required.

13. Denies the allegations set forth in paragraph “13 ” of the Complaint.

14. Denies the allegations set forth in paragraph “14” of the Complaint.

15. Denies the allegations set forth in paragraph “15” of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16 ” of the Complaint.

17. Denies the allegations set forth in paragraph “17” of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Denies the allegations set forth in paragraph “19” of the Complaint.

20. In response to the allegations set forth in paragraph “20” of the Complaint, defendant

repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

21. Paragraph "21" of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no response is required.

22. Denies the allegations set forth in paragraph "22" of the Complaint.

23. Paragraph "23" of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no response is required.

24. Denies the allegations set forth in paragraph "24" of the Complaint.

25. Denies the allegations set forth in paragraph "25" of the Complaint.

26. In response to the allegations set forth in paragraph "26" of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

27. Denies the allegations set forth in paragraph "27" of the Complaint.

28. Denies the allegations set forth in paragraph "28" of the Complaint.

29. In response to the allegations set forth in paragraph "29" of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

30. Denies the allegations set forth in paragraph "30" of the Complaint.

31. Denies the allegations set forth in paragraph "31" of the Complaint.

32. Denies the allegations set forth in paragraph "32" of the Complaint.

33. In response to the allegations set forth in paragraph "33" of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

34. Denies the allegations set forth in paragraph “34” of the Complaint.

35. Denies the allegations set forth in paragraph “35” of the Complaint.

36. In response to the allegations set forth in paragraph “36” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

37. Denies the allegations set forth in paragraph “37” of the Complaint.

38. Denies the allegations set forth in paragraph “38” of the Complaint.

39. In response to the allegations set forth in paragraph “39” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

40. Denies the allegations set forth in paragraph “40” of the Complaint.

41. Denies the allegations set forth in paragraph “41” of the Complaint.

42. In response to the allegations set forth in paragraph “42” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

43. Denies the allegations set forth in paragraph “43” of the Complaint.

44. Denies the allegations set forth in paragraph “44” of the Complaint.

45. In response to the allegations set forth in paragraph “45” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

46. Denies the allegations set forth in paragraph “46” of the Complaint.

47. Denies the allegations set forth in paragraph “47” of the Complaint.

48. In response to the allegations set forth in paragraph “48” of the Complaint, defendant

repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

49. Denies the allegations set forth in paragraph "49" of the Complaint.

50. Denies the allegations set forth in paragraph "50" of the Complaint.

51. Denies the allegations set forth in paragraph "51" of the Complaint.

52. Denies the allegations set forth in paragraph "52" of the Complaint.

53. Denies the allegations set forth in paragraph "53" of the Complaint.

54. Denies the allegations set forth in paragraph "54" of the Complaint.

55. Denies the allegations set forth in paragraph "55" of the Complaint.

56. Denies the allegations set forth in paragraph "56" of the Complaint and all subparts thereto.

57. Denies the allegations set forth in paragraph "57" of the Complaint.

58. In response to the allegations set forth in paragraph "58" of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

59. Denies the allegations set forth in paragraph "59" of the Complaint, except admits that on September 21, 2006 a document purporting to be a notice of claim was served on the Comptroller's Office for the City of New York

60. Denies the allegations set forth in paragraph "60" of the Complaint, except admits that there has been no adjustment or payment on plaintiffs' claims.

61. Denies the allegations set forth in paragraph "61" of the Complaint, except admits that the Complaint was filed with the Court on or about September 14, 2007.

62. Denies the allegations set forth in paragraph "62" of the Complaint.

63. Paragraph “63” of the Complaint sets forth conclusions of law rather than averments of fact and accordingly no response is required.

64. In response to the allegations set forth in paragraph “64” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

65. Denies the allegations set forth in paragraph “65” of the Complaint.

66. Denies the allegations set forth in paragraph “66” of the Complaint.

67. In response to the allegations set forth in paragraph “67” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

68. Denies the allegations set forth in paragraph “68” of the Complaint.

69. Denies the allegations set forth in paragraph “69” of the Complaint.

70. In response to the allegations set forth in paragraph “70” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

71. Denies the allegations set forth in paragraph “71” of the Complaint.

72. In response to the allegations set forth in paragraph “72” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

73. Denies the allegations set forth in paragraph “73” of the Complaint.

74. In response to the allegations set forth in paragraph “74” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

75. Denies the allegations set forth in paragraph “75” of the Complaint.

76. Denies the allegations set forth in paragraph “76” of the Complaint.

77. Denies the allegations set forth in paragraph “77” of the Complaint.

78. Denies the allegations set forth in paragraph “78” of the Complaint.

79. In response to the allegations set forth in paragraph “79” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

80. Denies the allegations set forth in paragraph “80” of the Complaint.

81. Denies the allegations set forth in paragraph “81” of the Complaint.

82. In response to the allegations set forth in paragraph “82” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

83. Denies the allegations set forth in paragraph “83” of the Complaint.

84. Denies the allegations set forth in paragraph “84” of the Complaint.

85. In response to the allegations set forth in paragraph “85” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

86. Denies the allegations set forth in paragraph “86” of the Complaint.

87. Denies the allegations set forth in paragraph “87” of the Complaint.

88. Denies the allegations set forth in paragraph “88” of the Complaint.

89. In response to the allegations set forth in paragraph “89” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

90. Denies the allegations set forth in paragraph “90” of the Complaint.

91. Denies the allegations set forth in paragraph “91” of the Complaint.

92. In response to the allegations set forth in paragraph “92” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

93. Denies the allegations set forth in paragraph “93” of the Complaint.

94. Denies the allegations set forth in paragraph “94” of the Complaint.

95. In response to the allegations set forth in paragraph “95” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

96. Denies the allegations set forth in paragraph “96” of the Complaint.

97. Denies the allegations set forth in paragraph “97” of the Complaint.

98. Denies the allegations set forth in paragraph “98” of the Complaint.

99. Denies the allegations set forth in paragraph “99” of the Complaint.

100. Denies the allegations set forth in paragraph “100” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

101. At all times relevant to the acts alleged in the Complaint, the duties and functions of defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, the City of New York is entitled to governmental immunity from liability.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

102. Any injury alleged to have been sustained by plaintiffs resulted from plaintiffs’ own culpable or negligent conduct or that of a third party and was not the proximate result of any act of the defendant.



**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

103. There was probable cause for plaintiffs' arrest.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

104. Punitive damages cannot be assessed as against the City of New York.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

105. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

106. At all times relevant to the acts alleged in the complaint, defendant acted reasonably in the proper and lawful exercise of its discretion.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

107. Plaintiffs provoked any incident.

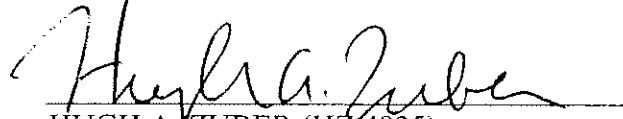
**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

108. Defendant has not violated any rights, privileges or immunities secured to the plaintiffs by the Constitution or laws of the United States or the State of New York, nor have the defendants violated any act of Congress providing for the protection of civil rights.

**WHEREFORE**, defendant City of New York requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 14, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
*Attorney for Defendants City of New York*  
100 Church Street,  
New York, New York 10007  
(212) 442-0832

By:   
HUGH A. ZUBER (HZ 4935)  
Assistant Corporation Counsel

TO: Brett H. Klein, Esq.  
Leventhal & Klein, LLP  
45 Main Street  
Brooklyn, New York 11201

Index No. 07-CV-8061(DLC)(KNF)	
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
ANTONIO RIVERA and SHARON LOPEZ,	
Plaintiffs,	
-against-	
CITY OF NEW YORK, et al.,	
Defendants.	
ANSWER TO THE COMPLAINT	
<b>MICHAEL A. CARDOZO</b> Corporation Counsel of the City of New York Attorney for {TEXT}~ 100 Church Street New York, N.Y. 10007	
Of Counsel: Hugh A. Zuber Tel: (212) 442-0832 NYCLIS No. 07SF029988	
Due and timely service is hereby admitted.	
New York, N.Y. ...., 200.....	
..... Esq.	
Attorney for.....	